

1 | slightly different frequencies by approximately 250 cycles. I  
2 | forget -- I believe Capitol was a little lower in frequency  
3 | than RAM, both certainly well within tolerance. But from  
4 | signal level, again, and looking at a spectrum display unit, I  
5 | can tell -- I can see both signals on the air simultaneously.

6 |       Q     So what you're saying is they both had the same  
7 | frequency, but one of them was a little bit in one direction  
8 | --

9 |       A     Correct.

10 |       Q     -- and the other was a little in the other  
11 | direction. And did you observe any instances where Capitol's  
12 | signal caused interference to RAM's transmissions?

13 |       A     Yes. There were several occasions where -- when  
14 | RAM's transmitter would be on the air, no interruption in  
15 | transmissions. Capitol would come on and transmit during the  
16 | same time frame.

17 |       Q     And what were the dates on which you observed such  
18 | transmissions and interference?

19 |       A     It would've been August 12th, 13th, 14th -- that is  
20 | -- there are no notes -- in town doing the same -- doing other  
21 | things, but while driving around, still monitoring it and did  
22 | observe the same thing.

23 |       Q     Turning to your inspection of Capitol's station,  
24 | starting with their offices, were you monitoring on the  
25 | frequency as you drove up to the offices?

1           A       Yes, we were and we did hear the same sequence of  
2 tones.

3           Q       Can you tell us what happened at the inspection when  
4 you got there?

5           A       We went in and introduced ourselves, identified that  
6 we were there for the inspection.

7           Q       The inspection of --

8           A       For the inspection of the private carrier system.  
9 Mr. Stone directed us to a Bob Wilson, I believe was his name.  
10 He was sort of an office manager, something like that, and  
11 instructed him to help us.

12                 MR. HARDMAN: Excuse me, Your Honor. But this  
13 really is just sort of trailing through what is stated in the  
14 report. If you go to Page Three, I mean, this is all pretty  
15 well laid out.

16                 JUDGE CHACHKIN: Ms. Foelak, is this repetitive or  
17 is this something additional?

18                 MS. FOELAK: Your Honor, I would just like to ask  
19 him a couple of questions to add greater detail to some of the  
20 incidents mentioned in the report.

21                 JUDGE CHACHKIN: I'll permit it. The objection is  
22 overruled.

23                 MS. FOELAK: Mr. Walker, on Page Three, as described  
24 in the second two paragraphs, looking at the terminal and the  
25 terminal went dead, what was your reaction when the screen

1 | went dead and the test function disappeared?

2 |           MR. HARDMAN: Your Honor, I object to the relevancy  
3 | of that.

4 |           JUDGE CHACHKIN: I'll overrule the objection. Go  
5 | ahead.

6 |           MR. WALKER: Mr. Stone had returned to the room as  
7 | we were in -- had observed that we were -- or at least was  
8 | able to observe that we were finding our way into the terminal  
9 | and were going to be able to look at this test set-up. We  
10 | alleged that this was the thing that was causing the sequence  
11 | of tones to be transmitted, some automatic test function  
12 | programmed into the terminal.

13 |           At the point where he possibly realized that we were  
14 | going to be -- going to find that, excused himself and left  
15 | the room. Mr. Wilson managed to get us connected to the  
16 | Huntington terminal by a modem which actually contained this  
17 | test set-up and just seconds before actually being able to see  
18 | this set-up on the computer screen, we lost the modem  
19 | connection.

20 |           My impression was, after some questioning of the --  
21 | of Mr. Wilson and his -- and further questioning of the person  
22 | in Huntington as to what happened, my impression was that Mr.  
23 | Stone had made a phone call and said, "Don't allow them access  
24 | right now."

25 |           MS. FOELAK: Would you consider this truly making

1 the station available for inspection?

2 MR. WALKER: No, I would not.

3 MR. HARDMAN: Your Honor, I object. There's no --

4 JUDGE CHACHKIN: Did you observe Mr. Stone making  
5 this phone call?

6 MR. WALKER: No, sir.

7 JUDGE CHACHKIN: Well, I'm going to strike any  
8 reference to Mr. Stone making the phone call. It's strictly  
9 speculation. There's no proof of that.

10 MR. HARDMAN: May I also inquire, Your Honor -- the  
11 witness was asked about whether this was making facilities  
12 available for inspection and there's no such citation in the  
13 Hearing Designation Order.

14 JUDGE CHACHKIN: There is no issue as to that, is  
15 there?

16 MS. FOELAK: No, there's no issue as to making the  
17 station available for inspection.

18 JUDGE CHACHKIN: I'll sustain the objection and  
19 strike the response to that question since there's no issue  
20 relating to that subject.

21 BY MS. FOELAK:

22 Q Mr. Walker, turning your attention to Page Four,  
23 there's discussion of a test of the -- a test of the test, as  
24 it were, as to whether a shorter duration sequence of tones  
25 would be effective. Can you tell us why a shorter test would

1 | be better than a longer test?

2 |       A     Simply to permit more paging traffic in a given time  
3 | -- during a given time.

4 |       Q     And can you tell us what happened when you first  
5 | requested that a test of the shorter tones take place?

6 |       A     I was told it would not work. We requested then a  
7 | demonstration of this. So a paging receiver was provided for  
8 | us. The changes were made in the paging terminal to permit a  
9 | shorter frequency of tones and a test page was transmitted.  
10 | We did not receive it at Capitol's office. We requested that  
11 | the tone sequence be readjusted back to the original set-up  
12 | and again, we did a test page. Again, we did not receive it.  
13 | At that point, I asked for a working pager as opposed to the  
14 | one that we were provided --

15 |       Q     Which was --

16 |       A     -- which apparently was not working and we then went  
17 | back to the shorter duration tones and it did work that time.

18 |       Q     And what would the reason be for using a longer  
19 | test?

20 |             MR. HARDMAN: Your Honor, I object. How could this  
21 | witness know what Capitol's reason would be for using a longer  
22 | test?

23 |             BY MS. FOELAK:

24 |       Q     Would the longer or shorter test more closely  
25 | approximate a page in real life?

1           A     Compared to what we have heard other situations with  
2 our experience, the shorter duration would be more typical,  
3 although that still was somewhat longer, I believe, that  
4 normal.

5           Q     All right. Turning your attention to your  
6 inspection of their actual transmission sites, can you tell us  
7 what power they were licensed for?

8           A     I believe, at this point, they were licensed for  
9 about 350 watts or something on that order.

10          Q     Can you tell us what kind of transmitters they had  
11 at each site and what power they were putting out?

12          A     I believe they were G.E. transmitters. Right now  
13 I'm not sure. I do know that at the time, I saw these as  
14 being hundred-watt nominal transmitters, intended to transmit  
15 a hundred watts.

16          Q     I'd like now to direct your attention to PRB Exhibit  
17 Four since you're on the witness stand. Can you open the book  
18 to that? Do you recognize that memo?

19          A     Yes. This is -- addresses Capitol's claim of  
20 attempting to provide service for Greenup County, Kentucky  
21 rescue squad.

22          Q     And is there anything that you would want to change  
23 in that memo?

24          A     No.

25                MS. FOELAK: Your Honor, I request that PRB-4 be

1 received into evidence.

2 MR. HARDMAN: I object, Your Honor. First of all,  
3 the first page and a half is devoted to total hearsay  
4 discussion of statements by a Mr. John Rowe. Now, this is not  
5 a case where the hearsay is reliable. I personally  
6 interviewed Mr. Rowe prior to the filing of the rebuttal  
7 statement in September of 1930 -- September 1992 and he  
8 confirmed in that interview the information that was stated  
9 regarding Greenup County and the testing.

10 MS. FOELAK: Your Honor, I object to counsel  
11 testifying as to Mr. Rowe's statements likewise.

12 MR. HARDMAN: I am making the record as to why this  
13 hearsay is not reliable and is prejudicial and should be  
14 barred.

15 JUDGE CHACHKIN: Go ahead.

16 MR. HARDMAN: Secondly, Mr. Kauffelt, about thirty  
17 days ago or so, interviewed Mr. Rowe again at which time he  
18 could not remember when -- exactly when the testing occurred  
19 or the circumstances, but did confirm that it was for the  
20 Greenup County Rescue Squad as such. Now, in our response to  
21 the interrogatories, we provided the government with Mr.  
22 Rowe's name, address, telephone number. They had every  
23 opportunity to call him.

24 And this is a classic case, Your Honor, in which the  
25 government's failure to produce the witness, but relying on a

1 hearsay description of uncertain specificity should be --  
2 resulted in an inference that the -- if the witness had been  
3 produced, the testimony would've been unfavorable to the  
4 government. On that basis, you know, we object to this -- to  
5 this hearsay. We object to the hearsay.

6 Now, as far as the rest of the report is concerned,  
7 for the most part, it is impressions of the witness. He is  
8 here. If he wishes to testify as to those matters, the extent  
9 of probative and relevant, he is able to do so. But the  
10 matter of fact of admitting this exhibit into evidence would  
11 be extremely unfair and prejudicial to Capitol.

12 JUDGE CHACHKIN: Mrs. Foelak?

13 MS. FOELAK: Your Honor, Mr. Hardman's hearsay  
14 objections are well-taken. However, the part of the exhibit  
15 which starts in the second paragraph of Page Two and starts,  
16 "During our inspection, Capitol's borrowed transmitter was  
17 found to be putting out only 76 watts ..." the part from there  
18 on down is not -- it has nothing to do with Mr. Rowe or  
19 Greenup County and we request that that portion of the exhibit  
20 be received into evidence.

21 JUDGE CHACHKIN: Which portions are you asking to  
22 receive?

23 MS. FOELAK: On Page Two, it starts on the last --  
24 second to the last sentence of the second paragraph. From  
25 that part on downward.



1 MR. HARDMAN: Is that the part that begins, "During  
2 our inspection of Capitol's --

3 MS. FOELAK: That's correct.

4 JUDGE CHACHKIN: "During our inspection..."?

5 MS. FOELAK: Yes.

6 JUDGE CHACHKIN: And where do you -- to where?

7 MS. FOELAK: Until the end.

8 JUDGE CHACHKIN: The end of the page?

9 MS. FOELAK: The end of the exhibit. Until the end  
10 of Page Three.

11 JUDGE CHACHKIN: Do you object to this portion?

12 MR. HARDMAN: Well, Your Honor, again the bulk of  
13 this is the witness' mental impressions which he can testify  
14 to at this point. There may be a few kernels of just fact.  
15 But again, the matter of fact of the document as a whole is  
16 not probative and what limited amount of probative value it  
17 has is outweighed by the possible prejudice and in any case,  
18 this witness is here and can testify to anything that's  
19 relevant and probative.

20 MR. JOYCE: Your Honor, since we're also a party to  
21 this, I don't understand why this is not an exception to the  
22 hearsay rules. It seems it would be an exception under two  
23 grounds. It's a contemporaneous record that was made by Mr.  
24 Walker and it's also obviously a document made in the ordinary  
25 course of the FCC's business. Now, in terms of the probative

1 weight of it, that's for you to decide, of course. But that  
2 doesn't mean that it's not admissable.

3 JUDGE CHACHKIN: Well, certainly insofar as it  
4 refers to a conversation with Mr. Rowe and whatever Mr. Rowe  
5 said, that's hearsay. It's being offered for the truth and  
6 Mr. Rowe should be here as a witness subject for cross  
7 examination. Otherwise, Mr. Hardman has no opportunity to  
8 cross examine Mr. Rowe. The remainder of the exhibit  
9 apparently refers to inferences and conclusions of the  
10 witness.

11 MS. FOELAK: Your Honor, it not only --

12 JUDGE CHACHKIN: It may have justified -- I mean, it  
13 -- if it was relevant to the fact that such action was taken,  
14 namely the reduction -- there was no justification for  
15 reduction or cancellation of the forfeiture, it may be  
16 relevant to show what took place prior to the hearing order.  
17 But for the truth of the matters therein, I have problems with  
18 it.

19 MR. JOYCE: I still, Your Honor, respectfully don't  
20 understand the hearsay problems. Mr. Hardman could cross  
21 examine Mr. Walker now about --

22 JUDGE CHACHKIN: As to what?

23 MR. JOYCE: -- about conversations that he had with  
24 Mr. Rowe.

25 JUDGE CHACHKIN: What difference does it make? He's

1 -- nobody's questioning what Mr. Rowe told him. The question  
2 is --

3 MR. JOYCE: That's my point, Your Honor.

4 JUDGE CHACHKIN: The question is not what Mr. Rowe  
5 told him. The question is the truth of what Mr. Rowe told  
6 him, not his report of what Mr. Rowe told him. That's not  
7 what it's being offered for. It's being offered for the truth  
8 of what Mr. Rowe said and no opportunity's afforded to Mr.  
9 Hardman to cross examine Mr. Rowe.

10 Now, if Mr. Rowe was to be a witness, to have  
11 relevant evidence, he should've been here to testify and then  
12 Mr. Hardman can cross examine him and Mr. Hardman has raised  
13 questions as to whether this is an accurate rendition of Mr.  
14 -- according to -- based on further conversations with Mr.  
15 Rowe and certainly this is key -- one of the issues in this  
16 case relates to what took place with respect to the Greenup  
17 County Rescue Squad.

18 So there's no question that as far as it relates --  
19 you can't put in through this exhibit -- you can't put into  
20 evidence Mr. Rowe's testimony for purposes of the truth of  
21 what he said. It clearly is improper. Mr. Rowe should've  
22 been brought here as a witness if the Bureau felt that he had  
23 relevant evidence.

24 Insofar as the rest of the exhibit goes, we have a  
25 witness here and if the witness needs this to refresh his

1 recollection about dates or times, he could do so. But I  
2 don't see the relevance -- and there's inferences and  
3 conclusions here and I don't see why the witness can't be  
4 examined and I could -- if there are objections made to the  
5 questions, whether conclusions or inferences or speculation, I  
6 could rule on it. So I'm going to reject Bureau Exhibit 4.  
7 If it's being offered for the truth, it's being rejected.

8 (Whereupon, the document referred  
9 to as PRB Exhibit No. 4 was  
10 rejected.)

11 MS. FOELAK: Very well. I will -- Your Honor, I  
12 will question Mr. Walker concerning some of the facts that are  
13 alluded to.

14 JUDGE CHACHKIN: Go ahead. Before we do so, I think  
15 this is an appropriate time for a luncheon recess until 1:30.  
16 So we'll resume at 1:30.

17 (Whereupon, a lunch recess was taken from 12:28 p.m.  
18 until 1:33 p.m.)

19  
20  
21  
22  
23  
24  
25

1                                   A F T E R N O O N       S E S S I O N

2                   JUDGE CHACHKIN: Back on the record. Ms. Foelak?

3                   BY MS. FOELAK:

4           Q       I'd like to ask a few more questions about the  
5 inspection. Do you recall -- did you take measurements or  
6 readings of the transmitter at the Huntington site or at the  
7 Charleston site that Capitol had?

8           A       Yes, we did. Since there's no note to the contrary,  
9 I would imagine the frequencies checked well within tolerance.  
10 Power, in both cases, seemed a little low, a hundred watts  
11 roughly in Charleston and 76 watts, I believe it was, in  
12 Huntington. Compared to an allowed 350 watts, I deemed that  
13 to be quite low.

14          Q       Does the power have any effect on how far the  
15 transmissions go or how strong they are when they get there?

16          A       Very much so. There's a direct relationship there.

17          Q       I'd like to ask you a question about another piece  
18 of equipment which is referred to here as an inhibitor and I  
19 believe Mr. Moyer referred to the same thing as a busy  
20 monitor. Did you examine any such piece of equipment?

21          A       Yes, I did, and what I recall there was that this  
22 was a scanning receiver. I know Capitol has come back and  
23 said a scanning transceiver perhaps. A thing that I found  
24 disturbing was that it definitely appeared that the squelch  
25 control on the front panel of that receiver appeared to still

1 be active. This would have a direct bearing on whether the  
2 receiver would detect RAM's signal or not, depending on the  
3 setting.

4 Q Can you say a little more in plain English what a  
5 squelch is or does?

6 A It's a circuit that will, in this case, look at the  
7 level of incoming signal and either that level meets or  
8 exceeds some set level or not. If it does not meet or exceed  
9 that level, than the audio circuits for the receiver are not  
10 opened. You do not hear anything on the receiver. Even  
11 though there could be a signal on the air, on that channel, it  
12 would not be of adequate level to open the audio circuits.

13 Q And how would one change the level of --

14 A The front panel knob and so that was the thing that  
15 I found disturbing, is that knob on the front panel appeared  
16 -- certainly appeared to still be active or connected to the  
17 circuits.

18 Q Did you maneuver it and observe any --

19 A I turned it and was able to get rid of the audio  
20 from RAM's signal. As far as I knew, RAM's signal was not --  
21 no longer on the air. By turning this, it would appear that  
22 there were no signals on the air, on that channel.

23 Q With reference to the identifier or morse code  
24 I.D.'er, had you observed anything when you were listening?

25 A During our monitoring there, in addition to the

1 signal -- the tones being slow, the morse code identifier, we  
2 observed as being transmitted at approximately seven words per  
3 minute. Rules required that (indiscernible) at 20 to 25 words  
4 a minute. So considerably slow.

5 Q 20 is faster than seven.

6 A 20 is much -- it's 20 to 25 words per minute, yes.

7 Q And so it takes up less time.

8 A Quite a bit faster.

9 Q And have you heard -- listened to morse code ID'ers  
10 on other occasions of -- you know, on the frequencies?

11 A Many radio people use these as a means of  
12 identifying the station, so they would hear this quite  
13 frequently.

14 Q At the time of the inspection, was there any  
15 discussion of the ID'er?

16 A Yes, there was. I was brought to the attention of  
17 Capitol personnel that the identifier was operating slow, that  
18 it was operating at a roughly seven words per minute as  
19 opposed to the required 20 to 25 words per minute. There was  
20 some attempt to determine why -- whether it was an improper  
21 setting or some malfunction at that time. Mr. Bogert would be  
22 better qualified to answer specific questions there. But from  
23 my recollection, whatever it was, it was left that the  
24 identifier is running slow and needs to be corrected for  
25 whatever reason.

1           Q     You discussed the -- in addition to the incident  
2 with the screen, did you discuss the tones and -- with whoever  
3 you met with at the inspection and were you told that the --  
4 what the meaning of the tones were or what was going on?

5           A     I'm not sure I understand the question.

6           Q     Did Mr. Stone or Mr. Wilson or Mr. Raymond or  
7 whoever you spoke to tell you why they were transmitting the  
8 tones or --

9           A     Okay. The paging tones you're referring to.

10          Q     That's correct.

11          A     When we first started the inspection, at some point  
12 very early in the inspection, I asked Mr. Stone why he was  
13 transmitting these testing -- or test pages. He said it was  
14 to -- that they were checking the link transmission system.  
15 When I questioned the validity of that --

16          Q     Could you just stop for a moment and for those who  
17 are not -- us -- for those of us who are not technically  
18 inclined, explain what's a link?

19          A     The link -- they -- they have to have a means of  
20 tying several transmitters together to cause them to operate  
21 at the same time with the same data.

22          Q     Several transmitters at different --

23          A     Several paging transmitters --

24          Q     -- places?

25          A     -- covering different areas will operate



1 simultaneously with the same information -- transmitting the  
2 same information. This link system accomplishes tying all  
3 these things together. In this case, it is a transmitter and  
4 perhaps several receivers such that all of the transmitters --  
5 well, the signal to activate the paging transmitter goes out  
6 over this system as well as the data to be transmitted.

7 Q Is the link a radio signal or a wire?

8 A In this case, it is a radio system -- a separate  
9 radio system.

10 Q And you said you questioned the validity of the link  
11 -- did testing for the link. How would you test a link?

12 A I would think that a test -- some test paging would  
13 be appropriate. What I've -- I feel like what they were doing  
14 -- what they're to be doing would be a viable means of testing  
15 it, although it seemed extremely excessive. A couple of  
16 pages, in my opinion, a couple of test pages at different  
17 times of the day, different days of the week, different times  
18 of the year should be adequate.

19 Q When you inspected the transmitter sites, was there  
20 anything else in addition to the nature of the transmitters  
21 and their power that you observed at the transmitter sites?

22 A Just the general condition, equipment laying here,  
23 laying there, wiring -- electrical wiring exposed. I felt  
24 like the area around the transmitter was a hazard and  
25 certainly feel like the wiring, et cetera, would not meet

1 local codes.

2 Q Could I direct your attention now to Private Radio  
3 Bureau Exhibit Five in the book? Do you recognize those three  
4 pages?

5 A Yes. These are basically subscriber lists provided  
6 by Capitol.

7 Q I see that Pages Two and Three are printed and Page  
8 One is handwritten. Can you give us a little more detail as  
9 to when you got them or what they --

10 A Page One, we'd gotten on the 15th, August 15th. I  
11 believe that was probably prepared by and given to us by Mr.  
12 Harrison at the -- while we were at the Huntington office.

13 Q And Page Two uses the term Charleston and Page Three  
14 uses the term Huntington.

15 A These are records provided by Capitol on the 16th --  
16 probably on the morning of the 16th and would appear to  
17 represent the page -- the paging customers for this system  
18 that are handwritten for the Charleston for -- in the case of  
19 Page Three or the Huntington terminals in the case of Page --  
20 Page Three -- I'm sorry. Page Three would be for Huntington,  
21 Page Two for Charleston.

22 Q Was there any additional discussion between you and  
23 Capitol -- anyone of the Capitol people about identifying  
24 paging customers or --

25 A Again, early during the inspection, I'd asked Mr.

1 Stone who his customers were or something along those lines.  
2 His reply was he didn't know how many customers he had, but  
3 one of his major subscribers was Marshall University in  
4 Huntington. Since then, I've never seen any reference to  
5 Marshall University and later in the day, I think we ended up  
6 with maybe three or four customers or half-a-dozen. Very few  
7 customers.

8 MS. FOELAK: Your Honor, I request that Private  
9 Radio Bureau Exhibit No. 5 be received into evidence.

10 JUDGE CHACHKIN: Any objection?

11 MR. HARDMAN: No objection.

12 JUDGE CHACHKIN: Bureau Exhibit 5 is received.

13 (Whereupon, the document referred  
14 to as PRB Exhibit No. 5 was  
15 received into evidence.)

16 MS. FOELAK: That's all I have for Mr. Walker.

17 JUDGE CHACHKIN: Do you have any questions, Mr.  
18 Joyce?

19 MR. JOYCE: Yes, I do have a few on direct, Your  
20 Honor.

21 DIRECT EXAMINATION

22 BY MR. JOYCE:

23 Q Mr. Walker, you came into town for this inspection  
24 on what day of the week? Do you recall? Sunday, Monday?

25 A It would've been Sunday evening.

1 Q And it was until what day of the week that you  
2 actually, physically inspected Capitol's station?

3 A Thursday.

4 Q So you had Sunday, Monday, Tuesday, Wednesday, four  
5 days prior to Thursday while you were doing these field  
6 studies?

7 A Yes.

8 Q Was it fairly continuous throughout -- I realize you  
9 had to check into the hotel and all that sort of thing. But  
10 when you -- how much --

11 A I don't recall that we did any monitoring or made  
12 any observations Sunday evening. Monday, certainly a good  
13 portion of the day. Tuesday, same thing, although the logs do  
14 not reflect that we did extensively monitoring. In doing  
15 other things, we did do some monitoring. Wednesday, we drove  
16 to Huntington -- to Ashland, conducted an inspection in  
17 Ashland of RAM's facilities, again monitoring -- observing the  
18 same types of activity. Thursday morning, we were monitoring  
19 prior to the inspection of Capitol's facilities, observed the  
20 same test paging, if that's an acceptable term.

21 Q And you have -- I'll get into that later. It's a  
22 term that has been used. You have some gizmos in your van, I  
23 presume, that allows you to do this off-air monitoring?

24 A Yeah. We have a tuneable receiver in the cars with  
25 built-in direction finding and so forth, tune the receiver to

1 | whatever channel that we're interested in, and are able to  
2 | listen to it, able also to see a visual representation of the  
3 | cycle on the spectrum analyzer display.

4 |       Q     What would -- what would be a visual display?

5 |       A     Well, the spectrum analyzer type display. A  
6 | representation of signal amplitude versus frequency. We can  
7 | see a signal on Channel A here and right beside it, we can see  
8 | a signal on another channel, perhaps not as strong, or  
9 | stronger.

10 |       Q     When you were doing this monitoring, Monday,  
11 | Tuesday, Wednesday, at any of those times, did you hear this  
12 | repeated tone sequence?

13 |       A     Each day. Monday, Tuesday, Wednesday, and Thursday.

14 |       Q     Was it just in the morning or just in the afternoon?

15 |       A     Our monitoring, while not continuous, there was  
16 | monitoring done morning, afternoon, evening. We heard the  
17 | same things.

18 |       Q     How late in the evening, for instance?

19 |       A     I'd say perhaps as late as midnight.

20 |       Q     The Capitol folks didn't happen to tell you what  
21 | their business hours were, did they?

22 |       A     Not that I recall.

23 |       Q     What time of day was it when you visited their  
24 | offices?

25 |       A     I believe it was approximately 10:30 or 11 a.m. when

1 we got to the office.

2 Q Their offices were open then, I presume?

3 A Yes.

4 Q This tone -- I don't want to take for granted that I  
5 know what this tone is, Mr. Walker. What exactly would create  
6 this tone?

7 A There are a series of tones, audible tones, that  
8 they select from. A two-tone sequence will address a paging  
9 receiver. What we were hearing was a sequence of two tones  
10 followed by two additional -- two different tones with that  
11 second set of tones repeated or some semblance thereof. I'd  
12 have to refer back to notes to be more precise. But they were  
13 addressing two -- in a sequence. They were addressing two,  
14 perhaps three different pagers and at least one of those  
15 pagers, the transmission to that was being repeated. So there  
16 were six -- a sequence of six, perhaps eight tones.

17 Q Did anyone at Capitol ever show you those pagers  
18 that the tones were supposed to be sent out to?

19 A The actual paging receivers?

20 Q Yes.

21 A Not that I recall.

22 Q Is there some way of identifying what those pagers  
23 would been if they were out there? Could you tell from your  
24 off-air monitoring that, you know, it's a pager with a  
25 particular cap code or some kind of identification?

1           A     Certainly Capitol would be able to address that.  
2 I'm not sure at this point that I would be able to.

3           Q     So the tone sequence never varied? It was the same  
4 three pagers?

5           A     Same -- the same sequence of tones, keeping in mind  
6 that that entire sequence, on occasion, was repeated more than  
7 once. It was the same sequence of tones, apparently  
8 programmed to be transmitted once a minute. If in a given  
9 minute or if it could not be transmitted now, it would be  
10 stored and held until such time as a transmitter was free to  
11 transmit. And perhaps a second sequence of tones would be due  
12 to be transmitted, that also would be stored. So here we have  
13 two sequences now that are waiting to be transmitted.

14          Q     When this happened at midnight, I presume that this  
15 could've happened automatically then? You didn't need an  
16 operator there to send out this signal. Is that correct?

17          A     I was assuming at that point that it was automatic  
18 because it was the same things or it certainly appeared to be  
19 the same sequence. It sounded to be the same sequence and  
20 tones.

21          Q     Do you typically stay up at midnight monitoring this  
22 kind of stuff?

23          A     Again, bearing in mind, this is not constant  
24 monitoring. While we're out, perhaps after dinner, perhaps  
25 after a movie, et cetera, going from Point A to Point B. The

1 receiver is in the car. The receiver is on. So in that  
2 respect, yes, we may subject to monitor whenever.

3 Q I guess I was trying to get an idea of whether you  
4 thought this particular form of repeated sequencing was  
5 unusual in your experience or not.

6 A I felt that it was unusual, yes.

7 Q When you went to inspect Capitol's station, you went  
8 to their office, did they ever actually show you the device  
9 that was creating these tones?

10 A We attempted to look at the program of the paging  
11 terminal which would show us the tests -- a test set-up which  
12 is -- at this point, we're not sure was -- what was causing  
13 it, what was actually triggering these pagers. So prior to  
14 our gaining access or during our efforts to gain access to  
15 such set-up, that set-up was deleted from the computers --  
16 from the paging terminals.

17 Q So you couldn't find out what was causing the tones?

18 A At some -- some time later, Mr. Harrison arrived at  
19 the Capitol's Charleston office. He reconstructed the paging  
20 -- the test set-up for us and seemed not to understand why the  
21 test set-up had been deleted.

22 Q You talked about a typical test set-up. Is it -- in  
23 your experience as an FCC field engineer, is it typical for  
24 somebody to test a paging transmitter four days, morning,  
25 noon, night, midnight?



1           A     I have never heard such testing. As far as I --  
2 from my experience, I'd have to say no, it is not typical.

3           Q     When you -- when did the toning actually -- the tone  
4 sounds, when did it actually stop? When did you first notice  
5 that it stopped?

6           A     During the inspection of Capitol's facilities. We  
7 had -- we were able to look at -- again, on the paging  
8 terminal, on the computer terminal, we were able to look at  
9 history. I believe it was a previous one hundred pages that  
10 had been sent. That history did show, as we later found out,  
11 that there was -- these pages were being sent. What we did  
12 not know at the time, that as soon as we looked at that  
13 history, that history was deleted from the files. So it was  
14 not available to us to look at again. As we -- but that  
15 history that we looked at, say approximately 11:00 --

16          Q     In the morning?

17          A     In the morning -- did show, up to the moment, that  
18 these pages were being sent on this channel. As we proceeded  
19 further to gain access to the test -- or enable -- in order to  
20 review the test set-up, it appears at that point that's when  
21 those pages ceased. Once we found that the test set-up had  
22 been deleted or was now present, Mr. Bogert went back out to  
23 one of our vehicles, monitored on a receiver, and confirmed  
24 that there was no more testing.

25          Q     Is it -- is there some standard protocol in testing?